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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiff

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8 DEPUTY

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10 UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 KATHY HOPKINS,

13) CASE NUMBER
14 Plaintiff,)
15)
16) COMPLAINT FOR FAILURE TO PAY
17) DISABILITY BENEFITS (ERISA)
18 vs.)
19)
20 FIRST UNUM LIFE INSURANCE)
21 COMPANY OF AMERICA,)
22 PHOENIX HOUSE FOUNDATION,)
23 INC. EMPLOYEES LONG TERM)
24 DISABILITY PLAN,)
25)
26 Defendants.)
27)
28)

'08 CV 1139 J CAB

20 JURISDICTION AND VENUE

21 1. This action is brought under the Employees Retirement Income Security Act
22 (hereafter ERISA). The Court has jurisdiction to hear this matter pursuant to 29 USC Section
23 1101 et seq. and 28 USC Section 1331.

24 2. Venue is proper insofar as Plaintiff was employed within the district when the
25 disability giving rise to her claim for benefits arose. The plan was applied to employees within
26 the state and district and does business within the district.

27 PARTIES

28 3. Plaintiff, by virtue of her employment, was covered by the long-term disability plan

1 of her employer, The Phoenix House. Plaintiff made a claim for benefits under said plan arising
2 from a disability hereafter described.

3 4. Plaintiff is informed and believes that Defendant FIRST UNUM LIFE INSURANCE
COMPANY and/or UNUM LIFE INSURANCE COMPANY OF AMERICA administers and
5 underwrites the long-term disability plan applicable to Plaintiff. Said plan sued herein as
6 Defendant PHOENIX HOUSE FOUNDATION EMPLOYEES LONG TERM DISABILITY
7 PLAN. Said entities are a plan and/or fiduciaries within the meaning of 29 USC Section 1001
8 and 1002.

9
10 **FIRST CAUSE OF ACTION**

11 **FOR FAILURE TO PAY DISABILITY BENEFITS**

12 5. At all times relevant hereto, Plaintiff was a participant of the plan. On or about
October 5, 2005, Plaintiff began a disability leave based on significant emotional distress arising
13 from her work. This stress included fear for her safety due to unsafe conditions at work, as well
14 as ongoing personnel matters related to Plaintiff's complaint of said conditions. At all times
15 relevant hereto, Plaintiff suffered severe psychological and mental conditions entitling her to
16 benefits under the terms of the plan.

17 6. The plan has an elimination period of six months prior to allowing someone to qualify
for benefits. The Plaintiff made timely application for benefits. Unfortunately, in the
18 intervening period, Plaintiff was diagnosed with follicular lymphoma. This physical diagnosis
19 additionally made her disabled from work.

20 7. Plaintiff timely made application for benefits under the plan. Pursuant to its terms,
Plaintiff was initially disabled based on her emotional condition and subsequently disabled
21 because of a cancer-related medical condition.

22 8. Plaintiff made a timely application for benefits under the terms of the plan and
cooperated in every respect in providing appropriate documentation.

23 24 9. Notwithstanding the foregoing, Defendants, and each of them, harmfully denied
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1 Plaintiff her benefits, finding that she was not disabled from working prior to her diagnosis of
2 lymphoma and that, by virtue of her not being at work for the intervening time period prior to her
3 diagnosis, did not then qualify for benefits under the plan.

4 10. Plaintiff appealed this denial of benefits which was subsequently affirmed by Unum.
5 Plaintiff has exhausted all remedies, internal, contractual and administrative remedies, available
6 to her and required under the terms of the plan.

7 11. The question of application of the plan in issues regarding disability were ministerial
8 in nature and the plan did not reserve discretion to make such decisions. Accordingly, the
9 decision to deny benefits is to be reviewed by the Court de novo. In the alternative, termination
10 to deny Plaintiff benefits was discretionary within the terms of the plan and the decision of the
11 administrators and fiduciaries constituted an abuse of discretion.

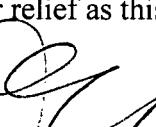
12 12. Accordingly, Plaintiff is entitled to declaratory relief that she is entitled to plan
13 benefits and an order enjoining the Defendants from denying past and future benefits, together
14 with the restitution of all unpaid sums from and after the expiration of the elimination period on
15 April of 2006, plus interest thereon.

16 13. In addition, Plaintiff has incurred attorney's fees in the prosecution of this matter and
17 is entitled to restitution of the same pursuant to 29 USC Section 1132(g).

18 WHEREFORE, Plaintiff prays judgment against Defendants and each of them, as
19 follows:

20 1. For declaratory and injunctive relief as prayed herein;
21 2. For restitution of benefits not paid, together with interest thereon;
22 3. For attorney's fees according to proof;
23 4. For costs of suit incurred herein; and
24 5. For such other and further relief as this Court may deem just and proper.

25 DATED: 6-18-08

26 
27 GEORGE L. de la FLOR
28 Attorney for Plaintiff

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152300 - TC
* * C O P Y * *
June 25, 2008
14:53:56

Civ Fil Non-Pris
USAO #: 08CV1139
Judge.: NAPOLEON A JONES, JR
Amount.: \$350.00 CK
Check#: BC3907

Total-> \$350.00

FROM: ATHY HOPKINS
VS
FIRTS UNUM LIFE INSURANCE CO.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained therein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ATHY HOPKINS

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

George L. de la Flor, Law Offices of George L. de la Flor, APC
355 La Mesa Blvd., La Mesa, CA 91941 (619)698-2926

DEFENDANTS

First Unum Life Insurance Company of America, Phoenix
House Foundation, Inc. Employees Long Term Disability Plan

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVEDAtt. (If Known) 08 CV 1139 L CAB DEPUT

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 620 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 1100, et seq.Brief description of cause:
Failure to pay disability benefits under ERISA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 152300AMOUNT \$ 350

APPLYING IFP

JUDGE

MAG. JUDGE

6/25/086/25/08